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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120509433-2433-01]

RIN 0648-BC00

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed action would delay or revise several portions of the Pacific Coast Groundfish Fishery Trawl Rationalization Program (program) regulations. These changes are necessary to enable the National Marine Fisheries Service (NMFS) to implement new regulations for the program to comply with a court order requiring NMFS to reconsider the initial allocation of Pacific whiting (whiting) to the shorebased Individual Fishing Quota (IFQ) fishery and the at-sea mothership fishery. The proposed rule would affect the transfer of Quota Share (QS) and Incidental Bycatch Quota (IBQ) between QS accounts in the shorebased individual IFQ fishery, and severability in the mothership fishery, both of which would be delayed until NMFS can implement any necessary new regulations in those areas required by the court's order.

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on June 29, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0062, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal, at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0062 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Fax: 206-526-6736; Attn: Ariel Jacobs.
- Mail: William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; Attn: Ariel Jacobs.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter “N/A” in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206-526-4491; (fax) 206-526-6736; Ariel.Jacobs@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented the trawl rationalization program for the Pacific coast groundfish fishery's trawl fleet (see 75 FR 78344; Dec. 15, 2010). The program was adopted through Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and consists of an IFQ program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only). Allocations to the limited entry trawl fleet for certain species were developed under Amendment 21 to the FMP, also implemented in 2011.

These rules became the subject of litigation, in Pacific Dawn, LLC v. Bryson, No. C10-4829 TEH (N.D. Cal.). The plaintiffs, fishing vessel owners and fishing processors represented by the named party, Pacific Dawn, LLC, challenged several aspects of the rules, but in particular the initial allocation of whiting QS in the shorebased IFQ and mothership fisheries. Following a decision on summary judgment that NMFS had not considered the correct data in setting its initial whiting allocations, on February 21, 2012, Judge Henderson issued an order remanding the regulations setting the initial allocation of whiting for the shorebased IFQ fishery and the at-sea mothership fishery "for further consideration" consistent with the court's December 22, 2011 summary judgment ruling, the Magnuson-Stevens Act (MSA), and all other governing law. The Order also requires NMFS to implement revised regulations setting the quota before the 2013 Pacific whiting fishing season begins on April 1, 2013.

On February 29, 2012, NMFS informed the Pacific Fishery Management Council (Council) of the order issued in Pacific Dawn, LLC v. Bryson. NMFS also requested that the Council initiate the reconsideration of the initial allocations for QS of whiting in the shorebased IFQ fishery and for whiting catch history assignments in the at-sea mothership fishery. NMFS requested the Council schedule this issue to be discussed at its April, June, and September 2012

meetings. NMFS also stated that a rulemaking was needed to delay or revise portions of the existing regulations setting these allocations while the Council and NMFS reconsidered the initial allocation of whiting, and informed the Council of its intent to publish an Advance Notice of Proposed Rulemaking (ANPR) on that reconsideration.

At the Council's March 2012 meeting, the Council added reconsideration of the allocation of whiting to the agenda for its April, June and September 2012 meetings. At the Council's April meeting, the Council adopted a range of alternatives for analysis. The Council will review a draft analysis of the alternatives and select a preliminary preferred alternative at its June meeting. At its September meeting, the Council will choose a final preferred alternative and make a recommendation to NMFS.

NMFS published an ANPR on April 4, 2012 (77 FR 20337) that, among other things, announced the court's order, the Council meetings that would be addressing the whiting reconsideration, and NMFS' plan to publish two rulemakings in response to the court order. These two rulemakings are referred to as Reconsideration of Allocation of Whiting, Rules 1 and 2 (RAW 1 and RAW 2, respectively). NMFS is using emergency action authority under the MSA 305(c)(1) for RAW 1; RAW 2 will go through the standard FMP Council process followed by a proposed and final rule. The first rulemaking, RAW 1, which is the subject of this proposed rule, would delay or revise several portions of the regulations while NMFS and the Council reconsider the initial allocation of whiting, and until NMFS implements any necessary new regulations in response to the court order. The second rulemaking, RAW 2, would take in to account the Council's September 2012 recommendation and reconsideration of the dates used for initial allocation of whiting for the shorebased IFQ and at-sea mothership fisheries. The proposed

rule for RAW 2 is scheduled to publish in November 2012, and the final rule in March 2013. The RAW 2 rule is scheduled to be effective by April 1, 2013, consistent with the court order.

Comments on the ANPR

NMFS received four substantive comments on the ANPR that addressed how delaying the ability to transfer QS and IBQ between QS accounts in the shorebased IFQ fishery might impact the 2-year period QS holders have to divest themselves of excess QS (the divestiture period). After considering these comments, NMFS proposes allowing additional time for divestiture, such that once QS transfer is allowed, QS participants in the shoreside IFQ fishery would then have 2 years to divest QS in excess of the accumulation limit.

As stated above, NMFS is using emergency action authority under MSA 305(c)(1) for RAW 1. Under that authority, NMFS, by delegation from the Secretary, can implement regulations for an FMP without going through the Council process where NMFS finds that an emergency involving a fishery exists. 16 U.S.C. 1855(a). The rules promulgated under such circumstances must “address the emergency.” 16 U.S.C. 1855(c)(1) and (2). NMFS’ internal guidance defining “an emergency” is in the Federal Register. 62 FR 44421; August 21, 1997. This guidance defines an emergency as a situation that (1) arose from recent, unforeseen events, (2) presents a serious conservation problem in the fishery, and (3) can be addressed through interim emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and the deliberative consideration of the impacts on participants to the same extent as would be expected under the formal rulemaking process.

Here, NMFS finds that an emergency exists that can only be addressed through this emergency action. Due to the court’s order in Pacific Dawn, several existing provisions of trawl regulations must be delayed while NMFS and the Council reconsider the initial allocation of Pacific whiting. Specifically, regulations with an effective date of September 1, 2012, which

would allow catch history assignment severability from the mothership/catcher-vessel (MS/CV) endorsed limited entry trawl permit, and other relevant provisions with an effective date of January 1, 2013, need to be delayed. However, there is insufficient time to go through the standard FMP Council process prior to the required effective date of this proposed rule. If NMFS does not take this action, then NMFS would not be able to implement the following rulemaking (RAW 2) that is required by the court's order. Accordingly, NMFS finds an emergency exists that can only be remedied through this emergency action.

The emergency action authority allows NMFS to delay this and other regulations related to the reconsideration of allocation of whiting for 180 days, with the possibility for an additional 185 day extension if there is a public comment period and the Council is concurrently addressing the reconsideration. NMFS intends to extend the delay of regulations for the additional 185 days, and relevant regulations may be further delayed as a part of the RAW 2 rulemaking. The RAW 2 rulemaking will be done through a three-meeting Council process with a preliminary preferred alternative selected at the June 2012 Council meeting, and a final preferred alternative selected at the September Council meeting, followed by the publication of proposed and final rules. Replacement provisions for the delayed regulations and the reconsideration will be included in RAW 2. RAW 2 is scheduled to publish by the beginning of the 2013 fishing season.

This proposed action for RAW 1 would:

- (1) Delay the ability to transfer QS and IBQ between QS accounts in the shorebased IFQ fishery;
- (2) Delay the requirement to divest excess quota share amounts for the shorebased IFQ fishery and the at-sea mothership fishery;

(3) Delay the ability to change MS/CV endorsement and catch history assignments from one limited entry trawl permit to another;

(4) Modify the issuance provisions for quota pounds (QP) for the beginning of fishing year 2013 to preserve NMFS' ability to deposit the appropriate final amounts into IFQ accounts based on any recalculation of QS allocations. In the meantime, NMFS proposes to deposit into accounts an interim amount of QP based on the shorebased trawl allocation, as reduced by the amount of QP for whiting trips for whiting, and for species caught incidentally in the whiting fishery (including lingcod, Pacific cod, canary, bocaccio, cowcod, yelloweye, Pacific ocean perch, widow, English sole, darkblotched, sablefish N. of 36°N lat., yellowtail N. of 40°10' N. lat., shortspine N. of 34°27' N. lat., minor slope rockfish N. of 40°10' N. lat., minor slope rockfish S. of 40°10' N. lat., minor shelf rockfish N. of 40°10' N. lat., minor shelf rockfish S. of 40°10' N. lat., and other flatfish). The remainder of the interim QP would be deposited in accounts at the start of the whiting primary season.

This action also advises the at-sea mothership fishery that the response to the court order may impact processor obligations and cooperative (coop) formation if whiting catch history assignments are recalculated, and announces further details on the process for the affected public to review and correct, if necessary, their landings and delivery data through 2010, since this data may be used for reallocation.

Each of these elements is described in further detail below in this preamble.

Delay Transfer of QS and IBQ

The trawl rationalization program, as implemented in January 2011, delayed QS holders' ability to transfer QS and IBQ between QS accounts in the Shorebased IFQ fishery through December 31, 2012 (i.e., transfer could begin in 2013). This proposed action would further

delay QS holders' ability to transfer QS and IBQ between QS accounts. This suspension of QS transfers would be a temporary action, but is necessary to avoid complications which would occur if QS permit owners in the shorebased IFQ fishery were allowed to transfer QS percentages prior to the whiting allocation reconsideration. Due to the complexity of online transactions occurring within the fishery, NMFS has determined that it is necessary to suspend QS transfers for all species, not just those directly impacted by the reconsideration. If QS permit owners were allowed to transfer QS percentages of whiting and incidentally caught species prior to the completion of the reconsideration, then it would be difficult, if not impossible, to track QS in order to resolve discrepancies or changes to QS allocations. Additionally, if QS transfers were allowed before the completion of the reconsideration of whiting allocations, QS permit owners would be transferring QS amounts that potentially could increase or decrease after the reconsideration, possibly undermining business relationships and confusing buyers and sellers.

Also, if whiting QS is reallocated, depending on the formula used, there may be new QS permit owners, while some current QS permit owners who received initial whiting QS allocations may not receive any under a recalculation. Moreover, because QS units do not have a unique identifier, QS loses its identity following a transfer; therefore tracking QS through transfers is extremely difficult. This rule would re-write § 660.140(d)(3)(ii)(B), paragraph (2) to state that QS or IBQ cannot be transferred, except under U.S. court order or authorization, and as approved by NMFS. Additionally, the rule would state that QS and IBQ cannot be transferred to another QS permit owner, except under U.S. court order or authorization and as approved by NMFS.

Delay the requirement to divest excess QS in the shorebased IFQ fishery and the at-sea mothership fishery

Delayed implementation of regulations that allow for the transfer of QS could impact divestiture for those QS permit owners with QS over the accumulation limits (also called QS control limits) in the shorebased IFQ fishery. The current regulations give QS permit owners with excess QS two years after QS transfer begins to divest their excess QS amounts. In other words, during 2013 and 2014, QS permit owners with QS over the accumulation limits specified at § 660.140(d)(4)(i) must sell their excess QS by the end of 2014. At the start of 2015, any excess QS owned by QS permit owners would be permanently revoked by NMFS and redistributed to other QS permit owners in proportion to their current QS and IBQ holdings. Delaying QS transfers would shorten the divestiture period because QS could not be transferred during the reconsideration.

After considering informal public comments at the April 2012 Council meeting that the QS permit owners should retain a full two-year period for divestiture, NMFS proposes to revise the regulations at § 660.140(d)(4)(v) to state that any person that has an initial allocation of QS or IBQ in excess of the accumulation limits will be allowed to receive that allocation, but must divest themselves of the excess QS or IBQ during the first two years once QS transfers are allowed. Maintaining the full two years for divestiture would provide QS permit owners with sufficient time to plan and arrange sales of excess QS, as originally recommended by the Council for this provision of the trawl rationalization program.

Divestiture for the at-sea mothership sector will be addressed as necessary in RAW 2, because MS/CV endorsed limited entry trawl permit holders must divest their excess QS by December 31, 2012. Currently no member of the mothership sector has QS in excess of the accumulation limits. However, some members of this sector may exceed the accumulation limits

following the reconsideration. Thus, NMFS will consider through the Council process for RAW 2 whether it is necessary to reinstate a divestiture period based on the reconsideration.

Delay the ability to change MS/CV endorsement and catch history assignment

This proposed action would delay the ability of limited entry trawl permit owners in the mothership sector to transfer MS/CV endorsements and catch history assignments (CHA) between limited entry trawl permits. The rationale for this action is similar to that for delaying QS transfers in the shorebased IFQ sector; if permit owners are allowed to transfer ownership of catch history assignments before the reconsideration takes place, then it will be difficult for NMFS to track changes to the initial allocations of whiting and other incidentally caught species. Delaying CHA transfers is necessary because the values of CHA could change following the reconsideration, and it's possible that some CHA allocations could be reduced to zero. Accordingly, this rule would revise § 660.150 (g)(2)(iv)(B) and (C) to change MS/CV endorsement registration in order to temporarily delay severability, except in the cases of permit combination.

As described earlier in the preamble, NMFS will not suspend transfer of the limited entry trawl permit between permit owners (i.e., changes in permit ownership) or between vessels (i.e., change in permit registered to vessel). If NMFS reissues catch history assignments on MS/CV-endorsed limited entry trawl permits as a result of the reconsideration, NMFS will issue those permits to the permit owner of record with NMFS at the time of reissuance. Any person who is considering purchasing or otherwise obtaining ownership of an MS/CV endorsed permit should be aware that NMFS may change (increase or decrease) the current whiting catch history assignment given on the permit as a result of the reconsideration of the allocation whiting.

Deposit interim QP based on the shorebased trawl allocation as reduced by the amount of QP for whiting trips for whiting, and species caught incidentally in the whiting fishery

NMFS proposes to add regulatory language to allow it to deposit into QS accounts, on or about January 1, 2013, interim QP based on the shorebased trawl allocation as reduced by the amount of QP for whiting trips for whiting, and species caught incidentally in the whiting fishery. This proposal would enable the agency to allocate the appropriate final amounts based on any recalculation of QS allocations. Species caught incidentally in the whiting fishery (during whiting directed trips) include lingcod, Pacific cod, canary, bocaccio, cowcod, yelloweye, Pacific ocean perch, widow, English sole, darkblotched, sablefish N. of 36°N lat., yellowtail N. of 40°10' N. lat., shortspine N. of 34°27' N. lat., minor slope rockfish N. of 40°10' N. lat., minor slope rockfish S. of 40°10' N. lat., minor shelf rockfish N. of 40°10' N. lat., minor shelf rockfish S. of 40°10' N. lat., and other flatfish. These are the species for which the initial issuance allocation percentages for the whiting sector were greater than zero, as listed in the table at § 660.140(d) (8)(iv)(A)(10), or species for which the initial allocation is determined through the biennial specifications process (§ 660.140(d) (8)(iv)(A)(10)). In other words, NMFS would not deposit all of the QP to QS accounts at the beginning of the year regardless of whether the final harvest specifications for 2013 are effective. NMFS will only deposit sufficient whiting QP for non-whiting directed trips; all other QP will be issued following the reconsideration and recalculation of initial allocations of whiting and associated, incidentally caught species. Therefore, NMFS proposes to add temporary regulations to § 660.140(d)(1)(ii)(A) and (B) to specify that NMFS will hold back QP at the start of 2013.

Potential impact on processor obligations and coop formation

NMFS advises the at-sea mothership fishery that the response to the reconsideration may impact processor obligations and coop formation if whiting catch history assignments are recalculated. NMFS intends to announce any changes to the amount of catch history assignments associated with MS/CV-endorsed limited entry trawl permits by April 1, 2013. The mothership sector has until March 31, 2013, to submit their coop permit applications to NMFS for that fishing year. The coop permit application includes a list of the catch history amounts associated with specific MS/CV-endorsed limited entry permits and which MS permit those amounts are obligated to. In addition, MS/CV-endorsed permit owners must obligate their associated catch history assignment to an MS permit by September 1 of the prior year. Because both of these requirements may happen before NMFS has made its determination on the 2013 catch history assignments associated with MS/CV-endorsed permits, participants in the mothership fishery should be aware that this proposal may potentially impact their processor obligations, coop formation, and coop permit application. NMFS does not anticipate a need for regulatory changes to address these potential impacts and will work with any MS coop permit applicants if there are changes in catch history assignments from that noted in the 2013 coop permit application. For example, in the initial administrative determination for any 2013 MS coop permit application, NMFS could notify the coop manager of any changes in catch history assignments for MS/CV-endorsed permits associated with that coop. NMFS solicits public comment on this approach and any potential impacts on processor obligations or MS coop formation.

Process to review, and if necessary, correct data

Potential participants of the trawl rationalization program should be aware that NMFS intends to continue to use landings data from the Pacific States Marine Fisheries Commission's

PacFIN database and NMFS' Northwest Fisheries Science Center's Pacific whiting observer data from NORPAC (the North Pacific database) in reconsidering QS distribution for the trawl rationalization program, consistent with the approach used in 2009-2010. Landings data from state fish tickets, as provided by the states to the PacFIN database, would be used to determine allocations of IFQ QS for the shore-based whiting and nonwhiting harvesters and for the shore-based whiting processors. Landings data from the NORPAC database would be used to determine allocations of at-sea QS for the whiting mothership catcher vessels.

NMFS intends to follow the process it followed in 2009-2010, working with the PacFIN and NORPAC databases, to reevaluate the whiting allocations. Accordingly, NMFS will "freeze" the databases for the purposes of initial allocation on the date the proposed rule for RAW 2 publishes in the federal register to allow NMFS time to compile the dataset and cross check the data for any errors. "Freezing" the databases means that NMFS will extract a snapshot of the databases as of the proposed rule publication date, and use those data to allocate QS. "Freezing" the databases is necessary to hold them constant for use during qualification and initial issuance of the trawl rationalization program, and to form an administrative record of the database at a given point in time. Following the "freezing" of the databases, any corrections to the "frozen" database would be made with NMFS through the processes set forth in future trawl rationalization rules. After NMFS extracts a copy of the databases, the PacFIN and NORPAC databases will continue to exist and be updated through their normal processes, but such updates may not be used for reconsidered allocations of QS.

If potential participants in the trawl rationalization program have concerns over the accuracy of their data through 2010 in the PacFIN database, they should contact the state in which they landed those fish to correct any errors. Any revisions to an entity's fish tickets would

have to be approved by the state in order to be accepted. State contacts are as follows: (1) Washington – Carol Turcotte (360-902-2253, Carol.Turcotte@dfw.wa.gov); (2) Oregon – Michelle Grooms (503-947-6247, Michelle.L.Grooms@state.or.us); and (3) California – Jana Robertson (562-342-7126, jroberts@dfg.ca.gov). For concerns over the accuracy of NORPAC data, contact Neil Riley (206-861-7607, neil.riley@noaa.gov). NMFS urges potential QS owners to go directly to the source where fisheries data is entered in the database to get it corrected before NMFS extracts the data for reconsideration of QS allocation.

For limited entry permit or permit combination data, check NMFS website at <http://www.nwr.noaa.gov/GroundfishHalibut/Groundfish-Permits/index.cfm> or contact Kevin Ford (206-526-6115, kevin.ford@noaa.gov).

NMFS also considered whether to allow limited entry permit transfers (i.e., changes in permit ownership) for all limited entry trawl endorsed permits, except for those with a catcher/processor endorsement, for a period of time during the reconsideration. This allowance would simplify reissuance of QS permits in the shorebased IFQ fishery or catch history assignments on MS/CV-endorsed limited entry trawl permits in the at-sea mothership fishery. After assessing this step, NMFS has determined that it is not necessary because RAW 2 has no planned application process. The initial allocation had a lengthy application process that necessitated not allowing limited entry permit (LEP) transfers while NMFS reviewed applications. For this time, NMFS will issue an initial administrative determination (IAD), but not an application. Accordingly, there should not be a need to freeze LEP transfers. If NMFS reissues QS permits and/or catch history assignments on MS/CV-endorsed limited entry trawl permits, NMFS proposes that those permits be issued to the permit owner of record with NMFS at the time of reissuance. These details will be developed as part of the RAW 2 rulemaking.

Classification

Pursuant to section 305(c)(1) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP; a notice of availability for each of these final EISs was published on June 25, 2010 (75 FR 36386). The Amendment 20 and 21 EISs and the draft EA are available on the Council's website at <http://www.pcouncil.org/> or on NMFS' website at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm>. The regulatory changes in this proposed rule were categorically excluded from the requirement to prepare a NEPA analysis.

This proposed rule has preliminarily been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA) (5 USC 601 et seq). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the IRFA is available from NMFS (see ADDRESSES).

The Small Business Administration has established size criteria to define small entities under the RFA for all major industry sectors in the US, including fish harvesting and fish

processing businesses. Under these criteria, a business involved in fish harvesting is a small entity if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small entity if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small entity if it meets the \$4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small entity if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small entity is one with annual receipts not in excess of \$7.0 million.

These regulations directly affect holders of QS and CHA, which include both large and small entities. Quota shares were initially allocated to 166 limited entry trawl permit holders (permits held by catcher processors did not receive QS, while one limited entry trawl permit did not apply to receive QS) and to 10 whiting processors. Thirty-six limited entry permits also have MS/CV endorsements and catch history assignments. Because many of these permits were owned by the same entity, these initial allocations were consolidated into 138 quota share permits/accounts. Of the 166 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a “large” shorebased processing company or with a non-profit organization who considers itself a “large” organization. Nine other permit owners indicated that they were “large” companies. Almost all of these large companies are associated with the shorebased and mothership whiting fisheries. The remaining 133 limited entry trawl permits are

likely held by “small” companies. Of the 10 shorebased processing companies (whiting first receivers/processors) that received whiting QS, three are “small” entities.

NMFS is postponing the ability of QS permit owners to trade QS, as well as ability of MS/CV to trade their endorsements and catch history assignments separately from their limited entry permits. NMFS proposes this delay for QS species/species groups, because for many affected parties, their QS allocations (especially for bycatch species) are composed of whiting-trip calculations and non-whiting trip calculations. Currently, QS and IBQ trading has been prohibited for all species/species categories until January 1, 2013. By postponing these activities while NMFS and the Council reconsider the initial whiting allocations and implement any changes that result, NMFS seeks to minimize confusion and disruption in the fishery from trading quota shares that have not yet been firmly established by regulation. For example, as discussed above, if QS trading is not delayed, QS permit owners would be transferring QS amounts that potentially could change (increase or decrease) after the reconsideration. This situation would undermine business relationships and create confusion among buyers and sellers. As discussed above, RAW2 will implement any revised allocations of QS and MS/CV history assignments. RAW2 is expected to be effective by April 1, 2013 in time for the first whiting season opener off California, and before the major June 15 coastwide season opener. Similarly, NMFS also proposes to delay MS/CV’s ability to transfer endorsement and associated catch history assignments from one limited entry trawl permit to another. However, the MS/CV’s retain the ability to sell or trade a limited entry permit with the endorsement and catch history. All other MS/CV regulations remain unchanged. NMFS intends to announce any changes to the amount of catch history assignments associated with MS/CV-endorsed limited entry trawl permits by April 1, 2013, prior to the May 15 start date for the whiting mothership fishery.

Note that NMFS is not postponing fishing. To accommodate non-whiting fisheries that begin at the beginning of the year, NMFS will provide QP to QS holders, but hold back sufficient QPs for whiting and all other incidentally caught species from the annual allocation of QPs to QS accounts made on or about January 1, 2013 to allocate the appropriate final amounts based on any recalculation of the whiting QS allocations. The proposed process of “holding” back sufficient QP is similar to the current process of starting the year with an interim low estimate of the annual whiting trawl allocation and then in the spring of each year adjusting the QP in the QS accounts with any additional QP, based on the final whiting trawl allocation. The final whiting trawl allocation is typically not established until early May, to incorporate the latest stock assessment information, review tribal allocation requests, and receive Pacific Fishery Management Council recommendations. In 2012, this process was modified to include the processes of the U.S-Canada Pacific Whiting Treaty.

These delays will be temporary in nature and will benefit both small and large entities. NMFS proposes these delays to help smooth the transition to any changes in Pacific whiting allocations, and to reduce uncertainty for existing and potential new holders of these allocations.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (see ADDRESSES).

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central

Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementing the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior “no jeopardy” conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On February 9, 2012, NMFS Protected Resources Division issued a Biological Opinion (BO) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the operation of the Pacific coast groundfish fishery in 2012. In this Opinion, NMFS concluded that the operation of the groundfish fishery is not likely to jeopardize the continued existence of green sturgeon (*Acipenser medirostris*), eulachon (*Thaleichthys pacificus*), humpback whales

(*Megaptera novaeangliae*), Steller sea lions (*Eumetopias jubatus*), and leatherback sea turtles (*Dennochelys coriacea*). NMFS also concluded that the operation of the groundfish fishery is not likely to destroy or adversely modify designated critical habitat of green sturgeon or leatherback sea turtles. Furthermore, NMFS concluded that the operation of the groundfish fishery may affect, but is not likely to adversely affect the following species and designated critical habitat: Sei whales (*Balaenoptera borealis*); North Pacific Right whales (*Eubalaena japonica*); Blue whales (*Balaenoptera musculus*); Fin whales (*Balaenoptera physalus*); Sperm whales (*Physter macrocephalus*); Southern Resident killer whales (*Orcinus orca*); Guadalupe fur seals (*Arctocephalus townsendi*); Green sea turtles (*Chelonia mydas*); Olive ridley sea turtles (*Lepidochelys olivacea*); Loggerhead sea turtles (*Carretta carretta*); critical habitat of Southern Resident killer whales; and critical habitat of Steller sea lions. This proposed rule does not modify any activities that would affect listed species; and thus the February 9, 2012 BO conclusions are applicable.

On August 25, 2011, NMFS Sustainable Fisheries Division initiated consultation with U.S. Fish and Wildlife Service (USFWS) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the operation of the Pacific coast groundfish fishery. The Biological Assessment (BA) was revised and re-submitted to USFWS on January 17, 2012. The BA concludes that the continued operation of the Pacific Coast Groundfish Fishery is likely to adversely affect short-tailed albatross; however, the level of take is not expected to reduce appreciably the likelihood of survival or significantly affect recovery of the species. The BA preliminarily concludes that continued operation of the Pacific Coast Groundfish Fishery is not likely to adversely affect California least terns, marbled murrelets, bull trout, and Northern or Southern sea otters. USFWS formally responded with a letter dated March 29, 2012 and advised

NMFS that formal consultation has been initiated. Marine Mammal Protection Act (MMPA) impacts resulting from fishing activities proposed in this final rule are discussed in the FEIS for the 2011-12 groundfish fishery specifications and management measures. As discussed above, NMFS issued a biological opinion addressing impacts to ESA listed marine mammals. NMFS is currently working on the process leading to any necessary authorization of incidental taking under MMPA section 101(a)(5)(E).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: May 15, 2012

Alan D. Risenhoover,
Acting Deputy Assistant Administrator
For Regulatory Programs,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. In § 660.140, revise paragraphs (d)(1)(ii)(A)(1) and (2), (d)(1)(ii)(B)(1) and (2), (d)(3)(ii)(B)(2) and (d)(4)(v) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) * * *

(1) In years where the groundfish harvest specifications are known by January 1, deposits to QS accounts for IFQ species will be made on or about January 1. For 2013, NMFS will issue QP in two parts. On or about January 1, 2013, NMFS will deposit QP based on the shorebased trawl allocation as reduced by the amount of QP for whiting trips as specified at paragraph (d)(8)(iv)(A)(10) of this section for the initial issuance allocations of QS between whiting and non-whiting trips. In the spring of 2013, after NMFS has made a determination on the QS for QS permit owners, NMFS will deposit additional QP to the QS account, as appropriate.

(2) In years where the groundfish harvest specifications are not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for that year. For 2013, that amount will be further reduced by the amount of QP for whiting trips as specified at paragraph (d)(8)(iv)(A)(10) of this section for the initial issuance allocations of QS between whiting and non-whiting trips. After the final harvest specifications

are established later in the year, NMFS will deposit additional QP to the QS account. For 2013, this will occur in the spring after NMFS has made a determination on the QS for QS permit owners.

(B) * * *

(1) In years where the Pacific whiting harvest specification is known by January 1, deposits to QS accounts for Pacific whiting will be made on or about January 1. For 2013, NMFS will issue QP in two parts. On or about January 1, 2013, NMFS will deposit QP based on the shorebased trawl allocation as reduced by the amount of QP for whiting trips as specified at paragraph (d)(8)(iv)(A)(10) of this section for the initial issuance allocations of QS between whiting and non-whiting trips. In the spring of 2013, after NMFS has made a determination on the QS for QS permit owners, NMFS will deposit additional QP to the QS account, as appropriate.

(2) In years where the Pacific whiting harvest specification is not known by January 1, NMFS will issue Pacific whiting QP in two parts. On or about January 1, NMFS will deposit Pacific whiting QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. For 2013, that amount will be further reduced by the amount of QP for whiting trips as specified at paragraph (d)(8)(iv)(A)(10) of this section for the initial issuance allocations of QS between whiting and non-whiting trips. After the final Pacific whiting harvest specifications are established later in the year, NMFS will deposit additional QP to QS accounts. For 2013, this will occur in the spring after NMFS has made a determination on the QS for QS permit owners.

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(2) Transfer of QS or IBQ between QS accounts. QS or IBQ cannot be transferred to another QS permit owner, except under U.S. court order or authorization and as approved by NMFS. QS or IBQ may not be transferred to a vessel account.

* * * * *

(4) * * *

(v) Divestiture. Accumulation limits will be calculated by first calculating the aggregate non-whiting QS limit and then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the initial issuance of QS permits, an adjustment period will be provided after which they will have to completely divest their QS or IBQ in excess of the accumulation limits. QS or IBQ will be issued for amounts in excess of accumulation limits only for owners of limited entry permits as of November 8, 2008, if such ownership has been registered with NMFS by November 30, 2008. The owner of any permit acquired after November 8, 2008, or if acquired earlier, not registered with NMFS by November 30, 2008, will only be eligible to receive an initial allocation for that permit of those QS or IBQ that are within the accumulation limits; any QS or IBQ in excess of the accumulation limits will be redistributed to the remainder of the initial recipients of QS or IBQ in proportion to each recipient's initial allocation of QS or IBQ for each species. Any person that qualifies for an initial allocation of QS or IBQ in excess of the accumulation limits will be allowed to receive that allocation, but must divest themselves of the excess QS or IBQ during the first two years once

QS transfers are allowed (the divestiture period). Holders of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed. Once the divestiture period is completed, any QS or IBQ held by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will be revoked and redistributed to the remainder of the QS or IBQ owners in proportion to the QS or IBQ holdings in the immediately following year. No compensation will be due for any revoked shares.

* * * * *

3. In § 660.150,

a. Revise paragraph (g)(2)(iv)(B);

b. Remove and reserve paragraph (g)(2)(iv)(C) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

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(g) * * *

(2) * * *

(iv) * * *

(B) Application. NMFS is not accepting applications for a change in MS/CV endorsement registration at this time.

(C) [Reserved]

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